Supreme Court of the United States

OCTOBER TERM, 1946.

No. 1302.

In the Matter

—of the—

Petition of United States of Brazil, doing business under the trade name and style of LLOYD BRASILEIRO, for exoneration from or limitation of liability as owner of the S. S. "POCONE".

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI.

The main argument advanced by the petitioner for the granting of a writ has, we submit, no relation to the facts of this case. It is repeatedly stated in the petition and supporting brief (pp. 3, 5, 9, 10, 11 and 12) that fire broke out in the cargo while the "Pocone" was at sea; and that after the vessel tied up at her pier in Brooklyn, the existing fire in the cargo continued.

There is no justification for these assertions. Both the District Court (Finding 34, R. 1284) and the Circuit Court of Appeals (R. 1324) found that fire first broke out in the cargo at about 7:30 a.m. on January 1, 1942. The vessel had tied up at her pier in Brooklyn two days before (Finding 16, R. 1280).

Both of the courts below found that the outbreak of fire in the cargo was due to the negligence of those responsible for the discharge of the vessel, in fail-

ing promptly to remove the inflammable cargo stowed in the compartment adjoining the bunker where the coal had been on fire and separated from the fire only by a 3/8" steel bulkhead (R. 1283-4, 1328). The petitioner completely ignores these concurrent findings.

Apart from its attempt to reargue the facts, the only question presented by the petitioner is whether a carrier, through whose personal negligence fire has broken out in cargo, may escape liability for the resulting heavy loss in the vessel's various compartments, because of the fact that prior to its personal negligence and prior to the outbreak of the fire there was some heating and charring of the cargo immediately adjacent to the source of the fire. The petitioner's argument is that as the damage due solely to this heating and charring cannot be accurately determined, it should escape liability altogether. We believe that the mere statement of this proposition carries its own answer.

The petitioner asserts that the principle laid down by this court in *"The Vallescura"*, 293 U. S. 296, does not apply to the present case. We cannot understand why it does not apply, and neither could the Circuit Court of Appeals (R. 1329).

Respectfully submitted,

HENRY N. LONGLEY,
JOHN W. R. ZISGEN,
Proctors for Respondents.